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October 30, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: ***Preemption of State and Local Zoning and Land use Restrictions on the
Siting Placement and Constructions of Broadcast Station Transmission
Facilities
MM Docket No. 97-182***

Dear Mr. Caton:

Enclosed, on behalf of the Alabama Broadcasters Association, are an original and four copies of its comments in the above-referenced proceeding.

Should there be any questions regarding this transmittal, please do not hesitate to contact the undersigned at the number given above or M. Scott Johnson at 202-408-7122.

Sincerely,



Jocelyn R. Roy, Esq.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Preemption of State and Local)
Zoning and Land Use Restrictions)
on the Siting, Placement and Construction)
of Broadcast Station Transmission Facilities)

MM Docket No. 97-182

To: The Commission

COMMENTS OF THE
ALABAMA BROADCASTERS ASSOCIATION

The Alabama Broadcasters Association (the "Association"), by its attorneys and pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),^{1/} hereby submits its comments in response to the *Notice of Proposed Rule Making* ("NPRM") in the above-referenced proceeding. The *NPRM* requested comments on the jointly filed *Petition for Further Notice of Proposed Rule Making* ("Petition") of the National Association of Broadcasters ("NAB") and the Association for Maximum Service Television ("MSTV") (jointly "Petitioners"). The *Petition* requested, *inter alia*, that the Commission adopt a rule that would allow the Commission to preempt state and local zoning and other land use regulations that have the effect of prohibiting or unreasonably delaying the introduction of digital television services ("DTV") and the construction of other ongoing broadcast transmission facilities.

^{1/} 47 C.F.R. § 1.415 (1997).

I. INTRODUCTION

Members of the Association include various radio and television stations throughout the State of Alabama. The Association's members are stations from both large and small markets, stand-alone stations and combined operations, as well as multiple owners. As such, it is appropriate for the Association to voice the concerns of Alabama broadcasters with respect to the *Petition* proposing rules governing state and local zoning and other land use regulations regarding the present and future provision of broadcast services.

II. DISCUSSION

The Commission initiated this proceeding to determine to what extent state and local zoning ordinances are likely to affect the implementation of DTV services and to determine whether, and under what circumstances, federal preemption of state and local zoning regulations would be appropriate in order to achieve a rapid roll-out of DTV services. In addition, the Commission requested comment regarding whether any adopted preemption rules should be extended to all broadcasters.

The rule proposed by Petitioners would categorically preempt regulation of tower siting based upon: (1) radio frequency ("RF") emissions, as long as a broadcaster is in compliance with FCC regulations concerning emission limits; (2) interference with other telecommunications facilities and consumer devices if the broadcaster is in compliance with the Commission's interference regulations; and (3) tower lighting and marking requirements, assuming compliance with appropriate Federal Aviation Administration ("FAA") and FCC regulations. In addition, the proposed rule would preempt state and local zoning regulations

that impede the ability of broadcasters to construct or modify their facilities if such regulations are not linked to a clearly defined public health or safety objective (other than the above categorical exclusions). The proposed rule also provides specific time frames within which the state or local authority must act, and outlines procedures for the resolution of siting disputes.

The Association fully supports the rule proposed by Petitioners and urges the Commission to move expeditiously toward its adoption. In addition, the Association notes that any rule adopted should not be limited to DTV facilities or those broadcast facilities forced to relocate as a result of DTV conversion. Time delays and unreasonable denials of siting applications are problems experienced by many broadcasters, not just those seeking to deploy DTV services. Ordinances adopted by state and local zoning authorities are often extremely burdensome and the actual hearing process can be very time-consuming.

As an example of some of the requirements to be faced by the Association's members, the City of Huntsville, Alabama requires a tower owner to agree to negotiate with third parties about future co-location on the tower prior to granting construction approval.^{2/} The Huntsville Ordinance also requires broadcast towers to be capable of supporting a minimum of two UHF antennas and one FM antenna in addition to other radio service antennas and microwave dishes. Further, the Ordinance stipulates that there may never be any more antennas than there are television licensees in the city.^{3/} Detailed landscaping, and a multitude of other details, are also addressed in the 25 page Ordinance.

^{2/} See Section 73.20.17 of Ordinance No. 96-1008, Ordinance to Amend the Zoning Ordinances of the City of Huntsville, Alabama ("Huntsville Ordinance") at Attachment A.

^{3/} Huntsville Ordinance at p. 24.

Although sensitive to the authority of local governments to regulate traditional land use issues, as noted in the *NPRM*, the Commission has authority to preempt state or local law when necessary to achieve statutorily mandated goals and where necessary to accomplish its purposes within its delegated authority. Federal preemption is needed to carry out the Commission's goal of ensuring uninterrupted broadcast service to the public. Broadcasters must have a measure of certainty regarding the requirements that will be necessary to gain approval to construct or modify their tower facilities in a manner which does not interrupt or delay service to the public and so that local zoning authorities do not attempt to regulate in an area which is properly within the province of the FCC.

III. CONCLUSION

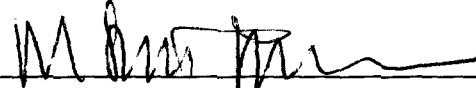
The Alabama Broadcasters Association supports the Commission's efforts to balance federal and non-federal interests in the provision of broadcast communications and encourages the Commission to move forward, consistent with the opinions expressed herein, to adopt preemption rules which will foster the ability of broadcast licensees to continue to provide the public with a diverse offering of broadcast communications services. Finally, although the Commission has a specific statutory obligation to ensure the rapid roll-out of DTV services, issues of zoning and tower construction between DTV facilities and all other broadcast facilities are intertwined in a manner that cannot justify inconsistent regulatory treatment. Accordingly, any preemption rules adopted to assist DTV facilities should be extended to all

broadcast facilities.

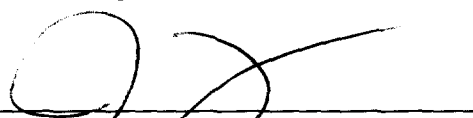
Respectfully submitted,

**ALABAMA BROADCASTERS
ASSOCIATION**

By:


M. Scott Johnson

By:


Jocelyn R. Roy

Its Attorneys

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Dated: October 30, 1997

SUBSTITUTE A

Substitute A

ORDINANCE NO. 96-1008AN ORDINANCE TO AMEND THE ZONING ORDINANCES OF THE
CITY OF HUNTSVILLE, ALABAMA

The public welfare requiring it, and under authority granted by Section 11-52-70 of the 1975 Code of Alabama, BE IT ORDAINED by the City Council for the City of Huntsville, Alabama, that the Zoning Ordinance of the City of Huntsville, Alabama, as adopted on the 21st day of March 1963, as amended, is hereby further amended as follows:

Section 1. Amend ARTICLE 3 - DEFINITIONS, Section 3.1 - Interpretation, by adding the following new definitions:

Amateur Radio Service Tower - A tower supporting only those antennas used for amateur radio service, for other non-revenue generating radio system services utilized strictly for personal use, public service, volunteer and community activities, and for receive-only antennas.

Antenna - A device used to transmit and/or receive radio frequency signals.

Broadcast Services - The transmission of television and radio programming to reach the general public. For the purposes of this ordinance, towers supporting VHF and UHF television and FM radio transmitting antennas shall be regulated as broadcast towers as shall any other towers that require an elevated site to broadcast programming to the general public. AM radio broadcast towers, which do not require elevated sites, exceptionally tall towers or line of sight transmission, shall be regulated as for mobile and fixed point radio service towers.

Commercial Mobile Radio Services - Encompasses those mobile services that are operated for profit, are connected to a telephone exchange network, and are available to the general public; includes services such as cellular telephone, personal communication services (PCS), specialized mobile radio (SMR), and paging.

DBS - Direct broadcast satellite services; a satellite system with sufficient power to allow small earth stations to be used for reception of compressed video signals.

Earth station - A facility that transmits and/or receives radio signals to and/or from a satellite.

FAA - Federal Aviation Administration.

FCC - Federal Communications Commission.

Fixed Point Radio Services - Encompasses non-mobile common carriers and multipoint distribution service operations that require fixed transmitting and receiving facilities, such as fixed point microwave and multipoint multichannel distribution services (MMDS).

Mobile Radio Services - A radio communication service that operates between mobile and fixed stations or between mobile stations. Mobile radio includes personal wireless services and private mobile radio services.

MMDS - Multichannel multipoint distribution services (also called wireless cable).

PCS - Personal communications services.

Personal Wireless Services - Includes commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined by the Federal Communications Commission.

Portable Tower, Mobile Tower or Truck Mounted Tower - Towers designed to be portable, whether or not the facility of which they are a part is permanently affixed to the ground, a building, or other permanent structure and utilized to supplement the service of a personal wireless service provider on a temporary basis.

Private Mobile Radio Services - Includes mobile radio services such as two-way radio used by public safety, special emergency, land transportation, and industrial radio service users.

Radio - Generic term referring to the communication of impulses, sounds and pictures through space by means of electromagnetic waves.

Transmitter - Equipment that generates radio signals for transmission via antenna.

TVDS - Television broadcast station.

Wireless Telecommunications - Any transmission or reception of signs, signals, writing, images, sounds, and/or data of any nature by means of the electromagnetic spectrum. Wireless telecommunications include but are not limited to cellular telephone, personal communication services (PCS), commercial and

private mobile radio, paging, public safety, fixed point microwave, amateur radio, radio and television broadcasting, satellite services such as direct broadcast satellite (DBS), and multichannel multipoint distribution services (MMDS).

Wireless Telecommunications Tower - A structure, such as a self-supporting lattice tower, a guyed tower, or a monopole, designed and constructed primarily for the purpose of supporting one or more antennas, which may include accessory facilities necessary for equipment storage and unmanned operations.

Section 2. Amend ARTICLE 20 NEIGHBORHOOD BUSINESS C-1 DISTRICT REGULATIONS, Section 20.1 Uses Permitted by amending the following uses:

Radio or television studios and transmitting facilities.

to read as follows:

Radio and television studios but not including broadcast towers.

Amend ARTICLE 21 - NEIGHBORHOOD BUSINESS C-1A DISTRICT REGULATIONS, Section 21.1 - Uses Permitted by amending the following uses:

Radio and television studios and transmitting facilities.

to read as follows:

Radio and television studios but not including broadcast towers.

Amend ARTICLE 24 - HIGHWAY BUSINESS C-1 DISTRICT REGULATIONS, Section 24.1 - Uses Permitted by amending the following uses:

Radio and television studios and transmitting facilities.

to read as follows:

Radio and television studios but not including broadcast towers.

Amend ARTICLE 43 - AIRPORT INDUSTRIAL PARK DISTRICT REGULATIONS, Section 43.1 - Uses Permitted by amending the following uses:

Heliport, nuclear reactor, radio or television broadcasting studios and transmitters and towers--provided such uses are in accordance with Section 43.7 hereof.

to read as follows:

Heliports and radio and television studios but not including broadcast towers--provided such uses are in accordance with Section 43.7 hereof.

Amend ARTICLE 50 - RESEARCH PARK DISTRICT REGULATIONS,
Section 50.1 - Uses Permitted by amending the following uses:

Heliports, radio or television broadcasting studios and transmitters and towers--provided such uses are in accordance with Section 50.2 hereof.

to read as follows:

Heliports and radio and television studios but not including broadcast towers--provided such uses are in accordance with Section 50.2 hereof.

Amend ARTICLE 51 - RESEARCH PARK WEST DISTRICT REGULATIONS,
Section 51.1 - Uses Permitted, by amending the following use:

Telecommunications.

to read as follows:

Telecommunications businesses, excluding radio and television studios.

Amend ARTICLE 52 - RESEARCH PARK APPLICATIONS DISTRICT REGULATIONS, Section 52.1 - Uses Permitted by amending the following uses:

Radio and television broadcasting.

to read as follows:

Radio and television studios but not including broadcast towers.

Section 3. Amend ARTICLE 73 - SUPPLEMENTARY REGULATIONS,
Section 73.9 - Height Modifications, subsection 73.9.1 to read as follows:

- 73.9.1 Except as provided in Sections 73.9.2 and 73.20 hereof, the height limitations of this ordinance shall not apply to church spires, barns, silos, monuments, missiles, flag poles, antennas, penthouses and domes not used for human occupancy, nor to chimneys, water tanks, and necessary mechanical appurtenances usually carried above the roof level. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve and shall not exceed in cross-sectional area twenty percent (20%) of the ground floor area of the building.

Section 4. Amend ARTICLE 73 - SUPPLEMENTARY REGULATIONS, by adding new section 73.20 - Wireless Telecommunications Towers, to read as follows:

73.20 Wireless Telecommunications Towers

The regulations of this section are intended to provide for the growing need for telecommunications towers and antennas while minimizing any adverse environmental, aesthetic and visual impacts through careful design, siting, and landscape screening; to promote and encourage shared use (co-location) of existing and new towers and sites; to avoid potential damage to adjacent properties from tower failure or falling ice; to protect the health, safety and welfare of the general public; and to preserve the character of residential districts through judicious permitting of towers within such districts.

73.20.1 Applicability: Towers

Wireless telecommunications towers shall be permitted according to their function and location as provided herein:

(1) Towers in Non-residential Districts

AM radio broadcast towers, a tower erected primarily for the use of mobile or fixed point radio service antennas, or any other telecommunications tower not otherwise covered by Section 73.20.1 that will accommodate multiple users shall be permitted in non-residential zoning districts subject to these regulations and any other applicable codes and regulations.

(2) Single User Towers

A special exception shall be required to

construct AM radio broadcast towers, a tower erected primarily for the use of mobile or fixed point radio service antennas, or any other telecommunications tower not otherwise covered by Section 73.20.1 in any non-residential district if it will not be designed, constructed, and available to accommodate multiple users.

Tower applicants, except those for AM radio broadcast towers, must demonstrate an inability to locate on existing towers or other structures accompanied by supporting documentation as specified in Section 73.20.16 - Co-Location. (See Section 92.5.3(20) hereof.)

(3) Towers in Residential Districts

A special exception shall be required to locate or construct a tower erected for the support of personal wireless service antennas in any residential district. (See Section 92.5.3(9) hereof.)

(4) Broadcast Towers

A special exception shall be required to construct a broadcast tower in any district if it will support one or more UHF or VHF television or FM radio transmitting antennas or other broadcast antennas having similar elevation and height requirements. (See Section 92.5.3(21) hereof.)

(5) Existing Towers

All telecommunications towers existing on the effective date of this ordinance that have been lawfully erected shall be allowed to continue as non-conforming uses, provided they continue to meet or exceed current federal standards and regulations, as amended, and the provisions of Section

73.20.7 - Tower Height or beyond the existing height if already in excess of the allowable height. Any new construction that would increase tower height or alter the structural strength or configuration of the tower will require the tower to be brought into compliance with the provisions of this ordinance except for Section 73.20.3 - Setbacks.

(6) Amateur Towers in Residential Districts

Amateur radio towers are permitted in any residential district subject to the following conditions:

- (a) One tower may be installed in the rear yard as an accessory structure to a licensed operator's legal residence, and all guy wires and anchors must be contained on the lot and may not extend closer than five feet to any boundary line of the lot.
- (b) The tower and antennas shall not exceed one hundred (100) feet in height.
- (c) Amateur radio towers shall be used exclusively for amateur radio antennas; for other non-revenue generating radio system antennas used strictly for personal use, public service, volunteer, and community activities; and for receive only antennas. No amateur radio tower shall support any antenna being used for a revenue producing or business activity.
- (d) A building permit must be issued prior to installation of an amateur radio tower.

(7) Amateur Towers in Non-residential Districts

Amateur radio towers may be located in non-residential districts if they comply with Sections 73.20.3-Setbacks; 73.20.4-Lighting; 73.20.5-Color; 73.20.6-Site Security; 73.20.7-Height; 73.20.8-

Structural Design; 73.20.9-Signs;
7.20.10- Access; 73.20.11-Landscaping;
73.20.14-Abandonment; and 73.20.15-
Publicly Owned Property hereof and have
been issued a building permit.

(8) Portable or Mobile Towers

Portable or mobile towers may be utilized only for special, short term events attracting large numbers of people or for emergency situations; the provider must be issued a temporary use permit by the Building Inspector prior to siting of the portable facility, and the permit must specify the permitted location and the permitted dates of operation not to exceed ten days. The Building Inspector shall collect a \$100 application fee each time a portable tower is permitted for a period not to exceed ten days.

(9) Accessory Towers

A tower that is accessory to a business or other non-residential entity on the same lot in a non-residential district and that is for the exclusive use of the principal entity, its branches and its employees shall:

- (a) not exceed one hundred (100) feet in height,
- (b) not be permitted to carry other transmitting antennas,
- (c) have all guy anchors located at least ten (10) feet inside the lot lines, and
- (d) have been issued a building permit prior to installation.

73.20.2 Applicability: Antennas

Except for replacements of preexisting antennas that neither alter height, configuration or structural integrity of the support structure nor increase radio frequency emissions, all telecommunications antennas installed following

adoption of this ordinance shall comply with one of the following provisions:

- (1) Tower supported antennas that will be attached to existing, lawfully erected, towers shall be issued building and other required permits prior to installation subject to compliance with subsections 73.20.8(2) and 73.20.17(9) hereof.
- (2) Building or ground mounted antennas shall comply with the provisions of Section 73.20.12 - Antennas hereof.

73.20.3 Setbacks

- (1) The minimum setback for a tower shall be twenty-five percent (25%) of the tower height unless a greater setback is required by the regulations for the district in which the tower is located; however, no tower shall be located closer than two hundred feet (200') to any residential district nor closer than a distance equal to the height of the tower to any residential structure.
- (2) Towers located on the leased portion of a larger lot shall not be constructed in any required yard of the lot; towers shall not be located on the same lot with a residential structure.
- (3) Tower setbacks from the property lines of the lot on which the tower is located shall be measured from the perimeter of the tower base.
- (4) Guyed towers shall have their guy anchors located on the tower site at least ten feet from any lot line, and guy wires shall not cross any adjoining property, rights-of-way or public easements without prior approval of the owner of the public easement.
- (5) Setbacks shall in all cases be sufficient to contain on site all ice-fall unless adequate provisions have been incorporated to prevent the buildup of ice.
- (6) Minimum setbacks for accessory structures

constructed in conjunction with a tower shall be as established by the zoning district for principal buildings or be at least twenty-five feet (25') if no setback is required by the district.

73.20.4 Lighting

- (1) Towers shall not be artificially illuminated except as required by the Federal Aviation Administration or the Federal Communications Commission. Any required lighting shall be the minimum necessary to comply with federal regulations.
- (2) All security lighting must be contained within the fenced area and must not illuminate higher than ten feet.

73.20.5 Tower Color

Towers shall have a galvanized finish or be painted a silver, pale blue or gray; any regulation of the FAA or FCC that contradicts this requirement shall govern.

73.20.6 Site Security

The facility shall be fully secured. A chain link fence or a wall not less than eight (8) feet in height from finished grade shall be provided around each tower and all accessory structures. Access to the tower shall be through a locked gate. Where guy anchors are not contained within the security fence, a separate fence at least eight feet (8') in height shall be provided around each anchor. Towers without accessory structures may utilize anti-climb devices in place of a fence.

73.20.7 Tower Height

- (1) Towers in C-1 through C-3 districts shall not exceed 120 feet in height; towers in other non-residential districts shall not exceed one hundred eighty (180) feet in height.
- (2) Measurement of tower height shall include antennas, base pad, and other appurtenances

and shall be measured from the natural grade of the site.

73.20.8 Structural Design of Towers

- (1) Towers shall meet or exceed the structural requirements as set out in EIA/TIA-222-E "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures," as amended, published by the Electronic Industries Association and all applicable City of Huntsville building codes.
- (2) Any improvements and/or additions (antennas, dishes, etc.), excluding the repair and replacement of parts or components that do not increase tower height or alter the structural strength or configuration of the tower, to existing towers shall require that a notarized verification of compliance with the EIA/TIA-222-E Standards in effect at the time of the improvement or addition be submitted to the Building Inspector by the owner and a registered professional engineer.
- (3) Commercial towers 180 feet in height or less, except for accessory towers as described in Section 73.20.1(9), shall be monopoles unless the applicant can demonstrate that the specific conditions require another tower type.
- (4) Tower diameter at the base shall not be greater than required for the permitted tower height.

73.20.9 Signs

No signs shall be allowed on any tower or antenna.

73.20.10 Access

- (1) Where the lot on which a tower is to be erected does not meet the minimum lot area requirement for the zoning district or does not have frontage on the public road from which it derives access, then building permits shall not be issued for any

structures other than telecommunications towers and the unmanned accessory facilities required for equipment storage and tower operation. This use restriction must be made a part of any plat or deed describing this lot until such time as the lot comes into compliance with the zoning regulations.

- (2) Whenever a tower site does not have frontage on the public street from which it derives access, a permanent, twenty-foot (20') wide access easement shall be required.

73.20.11 Landscaping

A landscape buffer shall be required in all districts and shall effectively screen the view of the tower facility from public ways and adjacent properties.

- (1) The buffer shall be installed on the outside of the security fence.
- (2) The buffer shall consist of a minimum ten-foot (10') wide landscaped strip planted with an attractive combination of trees, shrubs, vines and/or ground covers.
- (3) Minimum required plantings include:
 - (a) A row of evergreen trees a minimum of eight feet tall when planted placed a maximum of ten feet apart;
 - (b) A continuous hedge of evergreen shrubs at least thirty inches high at planting placed in front of the tree line; and
 - (c) All plant materials shall be xeriscape tolerant.
- (4) Where towers are located on wooded sites:
 - (a) Tree cutting shall be limited to the area to be fenced and a five-foot (5') buffer along the outside of the fence. If the accessway must be cleared of trees, then tree cutting shall be

limited to the minimum width necessary to provide vehicular access to the tower facility but shall not exceed fifteen feet (15') in width.

- (b) Preservation of the natural vegetation surrounding the fenced area shall be substituted for the landscape buffer if it screens the compound from view from adjacent development and rights-of-way.
- (5) All landscaping must be installed in accordance with the provisions of Section 73.19 - Installation of Landscaping.
- (6) The owner of the tower shall be responsible for providing and maintaining all landscaping in a healthy and growing condition and replacing unhealthy or dead plants by the next growing season with plants that conform to the original intent of these regulations for as long as the tower stands.

73.20.12 Antennas

- (1) Non-residential districts: An antenna that is not attached to a tower shall be permitted on non-residential structures or be ground mounted provided:
 - (a) The antenna and its supporting structure, when attached to a non-residential structure, do not exceed twenty feet (20') in height;
 - (b) The antenna complies with all applicable FCC and FAA regulations;
 - (c) The antenna does not extend into the air space above any public right-of-way nor extend any closer than ten (10) feet to the boundary of the lot on which the structure is located;
 - (d) The support structure for the antenna and any facilities or equipment necessary for its operation comply with all applicable building codes and have received appropriate permits;

- (c) The antenna will be, and will remain, in compliance with current FCC standards concerning radio frequency emissions;
 - (f) The antenna site is not within the boundaries of a National Register historic district; and
 - (g) Satellite earth station antennas having a diameter greater than two meters, and DBS and MMDS antennas having a diameter greater than one meter:
 - (i) if attached to a building are placed to minimize their visibility from adjacent streets, or
 - (ii) if ground mounted meet required yard setbacks or have a setback of ten feet from lot lines if no setbacks are specified for the district, and
 - (iii) are not located in front yards unless visually screened from public rights of way.
- (2) Residential districts: An antenna that is not attached to a tower shall be permitted under the following conditions:
- (a) Personal wireless service antennas shall be permitted on principal, non-residential structures provided the antenna is in compliance with conditions (a) through (f) of Section 73.20.12(1) above.
 - (b) Satellite dishes, DBS, and MMDS receiving antennas having a diameter greater than one meter shall:
 - (i) be regulated as accessory structures,
 - (ii) be approved by the Huntsville Historic Preservation Commission if located in a National

Register historic district at a site visible from a public place, and

(iii) be issued a building permit prior to installation.

- (3) Masts greater than twelve feet in height used to support satellite dishes, television receiving antennas, or other antennas in non-residential districts shall require a building permit to insure safety of installation and shall not exceed twenty feet in height.

Masts used to support receive-only antennas in residential districts shall not exceed twelve feet in height.

- (4) Microwave dishes shall be of mesh or open grid construction whenever technically feasible and be colored to minimize their visibility.
- (5) Signs shall not be allowed on any antenna.
- (6) Receive-only antennas intended solely for the use of the occupants of the building or residence to which they are accessory shall be permitted when in compliance with the applicable provisions of this ordinance.

73.20.13 Non Conforming Towers

A telecommunications tower legally erected prior to adoption of these regulations that is damaged or destroyed to an extent of fifty percent (50%) or more of its replacement cost at the time of destruction may be reconstructed on its original site in conformity with the provisions of this ordinance. A building permit to reconstruct the facility shall comply with the then applicable standards, codes, and regulations, and shall be obtained within one hundred eighty (180) days from the date the facility is damaged or destroyed. If no permit is obtained or if the permit expires, the telecommunications facility shall be deemed to be abandoned.

73.20.14 Abandonment

- (1) Any tower that has not been in use for its original telecommunications purpose for a period of one hundred eighty (180) days shall be deemed to be abandoned. The tower owner shall have an additional ninety (90) days to remove an abandoned tower and any accessory structures or to reactivate the tower or to transfer the tower to another owner/operator who reactivates it. Removal of abandoned towers and accessory structures shall be at the owner's expense.
- (2) Each January every tower owner, with the exception of amateur radio operators, shall provide the Building Inspector with a list of all towers owned during the previous twelve months indicating the date of cessation of operation for any inactive towers, the date of dismantling for removed towers, the date of transfer of towers to other owners, and a certification that each standing tower is in compliance with Section 73.20.8 - Structural Design of Towers accompanied by a copy of the annual maintenance inspection report.

73.20.15 Publicly Owned Property

- (1) A tower to be located on land owned by any governmental entity or public agency shall comply with these regulations unless the tower and all antennas thereon are for the exclusive use of the public entity occupying or controlling the property.
- (2) Towers to be located on property owned by the City of Huntsville, other than rights of way, shall be subject to all applicable requirements of the Zoning Ordinance and other city codes.
- (3) Neither towers nor antennas shall be placed in city rights of way without the approval of the Huntsville City Council.

73.20.16 Co-Location

To minimize the adverse visual, aesthetic and environmental impacts associated with the proliferation of towers, co location of antennas by more than one user on existing or permitted

towers shall take precedence over the construction of new towers. Towers shall be designed to maximize shared use to the extent possible for the type of tower proposed without creating structural instability or electromagnetic interference with other antennas on the tower.

- (1) Subject to Section 73.20.16(2), no new tower shall be permitted unless the applicant demonstrates by sufficient documentary evidence that at least one of the following conditions is applicable:
 - (a) No existing towers or suitable structures are located within the geographic area required to meet applicant's engineering requirements, and no such towers are under consideration for building permits.
 - (b) Existing towers or other structures are not of sufficient height and cannot be reasonably altered to meet applicant's engineering requirements.
 - (c) Existing towers or other structures do not have sufficient structural strength and cannot be reasonably altered to support applicant's proposed antenna and related equipment.
 - (d) The proposed antenna would cause electromagnetic interference with existing antenna(s) on the tower or structure, or the existing antenna(s) would cause interference with the proposed antenna and the interference cannot be prevented at a reasonable cost.
 - (e) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
 - (f) Co-location would have a more detrimental environmental, aesthetic, or visual impact on the surrounding area than would construction of a new

tower.

- (2) Even if an applicant is able to demonstrate the existence of one of the foregoing conditions, a new tower may not be permitted if it is determined that the proposed location of the tower is not essential to the applicant to provide service in a given geographical area, and the tower would:
 - (a) interfere with or endanger the use of other telecommunication facilities; or
 - (b) endanger persons or property; or
 - (c) not be compatible with existing or proposed adjacent development; or
 - (d) have an impermissible environmental, visual, or aesthetic impact on the surrounding area.
- (3) Written requests by certified mail to co-locate on an existing or proposed tower shall be answered by the tower owner within thirty days of receipt of the request. Denial of a request without substantial documentary evidence as required herein demonstrating why co-location would not be possible or failure to respond to a request shall be a violation of the Zoning Ordinance.

73.20.17 Building Permits for Towers

Each application for a building permit for a tower, other than an amateur or accessory radio service tower, or for a structure accessory to such a tower shall contain the following information as appropriate:

- (1) A site plan drawn to scale and identifying the tower lot boundary and the tower site boundary, if different, and all required setbacks; location, type and height of tower(s); guy anchors; location, use and dimensions of existing and proposed structures; vehicular parking and access; existing vegetation to be retained; topography of the site; fences; adjacent